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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ELIZABETH R. TAPIA,
10 Plaintiff,
11 v.
12 MICHAEL J. ASTRUE, Commissioner of
13 Social Security,
14 Defendant.

CASE NO. C09-5192 FDB
ORDER ADOPTING REPORT
AND RECOMMENDATION
AFFIRMING THE
COMMISSIONER

15 The Magistrate Judge recommends that the Court should conclude that Elizabeth Tapia was
16 properly denied social security benefits because application of the proper legal standard and
17 substantial evidence support the Administrative Law Judge's (ALJ) finding that Plaintiff is not
18 disabled. Plaintiff has filed objections to the Report and Recommendation.

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20 The Plaintiff argues that, (1) the ALJ improperly afforded the non-treating physician's
21 opinion greater weight than that of the treating physician, (2) the ALJ failed to properly assess
22 Plaintiff's mental impairments, and (3) the ALJ improperly assessed Plaintiff's credibility.

23 **Evaluation of Medical Evidence**

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25 As detailed by the Magistrate Judge, after reviewing all the medical evidence, including
26 Plaintiff's medical records and the opinions of both treating and nontreating physicians, and
 Plaintiff's credibility, the ALJ determined Plaintiff was capable of performing a full range of

sedentary work. The ALJ explained that the record did not support the treating physician, Dr. Kriebel's assessment that Plaintiff was more severely limited. The ALJ pointed to evidence that showed plaintiff's activities were inconsistent with Dr. Kriebel's assessment and that the State Agency report, supported by the opinion of the nontreating physician, Dr. Hoskins, was the most consistent with the ALJ's review of the evidence. The Court agrees with the analysis of the Magistrate Judge.

Assessment of Mental Impairments

As detailed by the Magistrate Judge, like the physical impairments, the ALJ addressed the medical evidence related to Plaintiff's mental impairments in the context of the record as a whole. Although the ALJ did not summarize or note Dr. Lysak's opinion in her decision, the Magistrate Judge found no error in the determination because the ALJ's assessment of Plaintiff's mental impairments was consistent with Dr. Lysak's report. The ALJ found that plaintiff had severe mental impairments caused by affective disorder, including anxiety and post-traumatic stress disorder, a learning disorder, and substance abuse dependence. The ALJ discussed the severity of the mental limitations, finding that Plaintiff has moderate restrictions in her activities of daily living, Plaintiff has only mild difficulties in social functioning, Plaintiff has moderate difficulties with regard to concentration, persistence or pace, and Plaintiff has not experienced any episodes of decompensation. These findings are reflected and supported by Dr. Lysak's report.

The Court agrees with the Magistrate Judge that the ALJ properly weighed the conflicting evidence for the mental impairments and properly relied upon the evidence in the record to conclude that Plaintiff retained the ability to perform a range of sedentary work.

Assessment of Plaintiff's Credibility

The Magistrate Judge found that although the ALJ improperly considered Plaintiff's obesity as a reason to discredit her credibility, this error did not negate the ALJ's proper reliance on the other reasons to discredit plaintiff's allegations of disability, i.e. Plaintiff's statements concerning her level of back pain and discomfort were not supported by objective medical evidence or plaintiff's activities.

The Court is in agreement with the Magistrate Judge that the ALJ's decision was supported by independent reasons and is proper.

Conclusion

The Court, having reviewed Plaintiff's complaint, the Report and Recommendation of Judge J. Richard Creature, United States Magistrate Judge, the objections to the Report and Recommendation, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
 - (2) The administrative decision is AFFIRMED; and
 - (3) The Clerk is directed to send copies of this Order to counsel of record.

DATED this 4th day of January, 2010.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE